

DEWEY & LEBOEUF LLP  
Barbara A. Caulfield ([bcaulfield@dl.com](mailto:bcaulfield@dl.com)) SBN 108999  
Peter E. Root ([proot@dl.com](mailto:proot@dl.com)) SBN 142348  
1950 University Avenue, Suite 500  
East Palo Alto, California 94303  
Telephone: (650) 845-7000  
Facsimile: (650) 845-7333

*Attorneys for Plaintiff Brocade  
Communications Systems, Inc.*

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

IN RE BROCADE COMMUNICATIONS  
SYSTEMS, INC. DERIVATIVE  
LITIGATION

**This Document Relates to:**

**ALL ACTIONS**

**Case No. C 05-02233 CRB**

**DECLARATION OF SPECIAL  
LITIGATION COMMITTEE  
MEMBERS IN SUPPORT OF  
SETTLEMENT WITH DEFENDANT  
GREGORY REYES**

Date: December 4, 2009  
Time: 10:00 a.m.  
Judge: Honorable Charles R. Breyer  
Dept.: 8, 19<sup>th</sup> Floor

RENATO A. DIPENTIMA AND JOHN W. GERDELMAN declare and state as follows:

1. We are members of the Board of Directors of Brocade Communications Systems, Inc. ("Brocade"). We joined Brocade's Board in early 2007.

2. Unless otherwise stated, we make this Declaration based on personal knowledge. If called as a witness, each of us could and would testify competently about the matters stated in this Declaration.

3. On February 22, 2008, Brocade's Board appointed us as the sole members of a Special Litigation Committee (the "SLC") and delegated to the SLC plenary authority to decide whether Brocade's and its shareholders' best interests would be served by pursuing or otherwise

DECLARATION OF SLC MEMBERS IN SUPPORT  
OF REYES SETTLEMENT  
C 05-02233 CRB

1 resolving any and all claims arising out of Brocade's historical equity-options compensation  
2 practices and related matters (the "Options Matters"), including, without limitation, the claims  
3 asserted in the above-captioned action (the "Consolidated Federal Derivative Action") and  
4 *Barbour v. Reyes*, No. 08-cv-2029-CRB, both of which were brought in this Court, and in *In re*  
5 *Brocade Communications Systems, Inc. Derivative Litigation*, Lead Case No. 1:05-CV-041683,  
6 which is pending in the California Superior Court for Santa Clara County. The Board also  
7 delegated to the SLC, to the fullest extent permitted by law, the exclusive power and authority to  
8 take any and all actions the SLC deems necessary or appropriate to the exercise of the delegation  
9 made to it.

10 4. On August 1, 2008, after reviewing the factual record concerning the Options  
11 Matters, the SLC, acting on behalf of Brocade, filed a Second Amended Complaint (the  
12 "Complaint") in the Consolidated Federal Derivative Action, asserting claims against ten former  
13 directors, officers, or employees of Brocade in connection with the Options Matters, including  
14 Gregory Reyes.

15 5. Brocade's records reflect that Mr. Reyes served as Brocade's Chief Executive  
16 Officer from July 1998 until January 2005 and as Chairman of the company's Board of Directors  
17 from May 2001 to January 2005. Reyes also served as a Board member from July 1998 through  
18 April 2005 and was a Section 16 officer of the company from 1999 to early 2005.

19 6. The Complaint asserted claims against Reyes under federal, Delaware, and  
20 California law.

21 7. After filing the Complaint, the SLC moved to realign Brocade as the party-plaintiff  
22 and to replace the original shareholder plaintiffs in the derivative actions. The derivative  
23 plaintiffs stipulated to Brocade's motion on August 18, 2008.

24 8. On August 27, 2008, the Court issued an Order realigning Brocade as the sole  
25 party-plaintiff in the above-captioned action, substituting for the original shareholder plaintiffs.  
26 The Court also dismissed the shareholder plaintiffs from this action.

27 9. On October 6, 2008, Reyes and the other defendants moved to dismiss the claims  
28 asserted against them in the Complaint.

1           10.     On December 12, 2008, the Court issued an Order, supplemented by a January 6,  
2     2009 Opinion, dismissing the federal- and California-law claims against Reyes, but declining to  
3     dismiss various Delaware-law claims against him.

4           11.     The Court also dismissed all claims in the Complaint against five other defendants  
5     who had not previously been part of the Consolidated Federal Derivative Action, but who were  
6     defendants in the parallel State Derivative Action, on the ground that the Complaint was untimely  
7     as to them for purposes of the Consolidated Federal Derivative Action. In its January 6, 2009  
8     Opinion, the Court stated that “[t]he [S]tate [Derivative] [A]ction has not been dismissed, rather it  
9     has been stayed pending the outcome of this action. Thus, Plaintiff would not lose all remedies  
10    against the state court Defendants if equitable tolling is not permitted here . . . .” *In re Brocade*  
11    *Comm’n’s Sys., Inc., Deriv. Litig.*, 2009 WL 35235, at \*13 (N.D. Cal. Jan 6, 2009).

12          12.     After the Court’s ruling on the motions to dismiss, five defendants – including  
13    Reyes – remained in the Consolidated Federal Derivative Action.

14          13.     In late January 2009, the SLC (on behalf of Brocade) entered into settlements with  
15    two of the five remaining defendants in the Consolidated Federal Derivative Action: Robert D.  
16    Bossi and Antonio Canova. This Court approved the settlements and entered contribution bar  
17    orders as to Bossi and Canova in March and April 2009.

18          14.     In February 2009, the SLC (on behalf of Brocade) entered into an agreement to  
19    binding arbitration with the three remaining defendants in the Consolidated Federal Derivative  
20    Action: Reyes, Neal Dempsey, and Seth Neiman.

21          15.     On February 27, 2009, this Court entered a stipulated Order Referring Action to  
22    Binding Arbitration, and stayed the Consolidated Federal Derivative Action pending completion  
23    of the arbitration proceeding.

24          16.     In May 2009, the SLC, on behalf of Brocade, entered into settlement agreements  
25    with Dempsey and Neiman. This Court approved those settlements in July 2009.

26          17.     In August 2009, the SLC, on behalf of Brocade, entered into a settlement  
27    agreement with Reyes.

28          18.     The settlement agreement, dated as of August 14, 2009, provides for Reyes to pay



1 \$12,500,000.00 to Brocade.

2 19. In addition, Reyes agreed that, as of May 2, 2009, Brocade would not be  
3 responsible for any further advancement or indemnification of fees, expenses, fines or penalties,  
4 amounts of disgorgement, judgments, or settlements that Reyes might incur arising out of or  
5 relating to the Options Matters.

6 20. Brocade agreed to pay Reyes' reasonable attorneys' fees and expenses incurred  
7 through May 2, 2009, as well as his reasonable attorneys' fees and expenses in the future if  
8 Brocade calls him as a witness or otherwise requests his assistance in any future proceedings.

9 21. In considering whether to settle with Reyes and in reaching the agreed settlement  
10 amount, the SLC weighed a number of matters relevant to whether Brocade's best interests would  
11 be served by continuing to litigate or by promptly resolving the remaining claims against Reyes.  
12 Those factors included (i) the likelihood of Brocade's success on the merits of the claims asserted  
13 and the quantum of any likely recovery against Reyes, (ii) the assets Reyes has available to satisfy  
14 any judgment entered against him in favor of Brocade, (iii) any obligation Brocade might have to  
15 indemnify and/or advance attorneys' fees and expenses to Reyes in connection with the Options  
16 Matters, including Brocade's litigation of the claims asserted in the Complaint against him,  
17 (iv) Brocade's own costs to pursue claims against Reyes, (v) the funds recovered and anticipated  
18 to be recoverable from other defendants, (vi) the \$9,500,000 contributed to Brocade by Wilson  
19 Sonsini Goodrich & Rosati, P.C., (vii) the \$15,000,000 that Reyes paid as a criminal fine without  
20 seeking indemnification or reimbursement from Brocade, (viii) Reyes' pledge to use his best  
21 efforts to direct to Brocade the recovery of fines, penalties, or disgorgements that he has paid or  
22 might pay in the future in connection with his disposition of any governmental proceeding, and  
23 (ix) Reyes' waiver of any claims for indemnification or for advancement of fees and expenses as  
24 of May 2, 2009.

25 22. Based on these considerations, the SLC determined that a settlement with Reyes  
26 would be in Brocade's best interests and would save Brocade substantial amounts of attorneys'  
27 fees and advancements of defense costs. Accordingly, the SLC entered into the Reyes Settlement  
28 Agreement, which is being presented to the Court for approval.

1           23.     The SLC understands that, in a direct action such as this one, court approval of a  
2 settlement does not appear to be required. However, in light of this Court's long involvement in  
3 the case and its interest in obtaining an appropriate resolution of these proceedings, the SLC  
4 wanted to ensure that the Court did not object to the SLC's handling of this matter on behalf of  
5 Brocade. The SLC therefore determined that it should present the settlement to the Court for its  
6 approval.

7                     We declare under penalty of perjury under the laws of the United States of  
8 America that the foregoing is true and correct.

9     Dated: Annapolis, Maryland  
10         September \_\_, 2009

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12                                     \_\_\_\_\_  
Renato A. DiPentima

13     Dated: Williamsburg, Virginia  
14         September 29, 2009

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16                                     John W. Gerdelman  
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11   /s/

12   Renato A. DiPentima

13           Dated: Williamsburg, Virginia  
14           September \_\_, 2009

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17   John W. Gerdelman  
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